



## U.S. Copyright Office

### 37 CFR Parts 201, 232, and 234

[Docket No. 2021–9]

#### Copyright Claims Board: Representation by Law Students and of Business Entities

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The U.S. Copyright Office is issuing a notice of proposed rulemaking to establish procedures governing the appearance of law student representatives and employees of business entities in proceedings before the Copyright Claims Board.

**DATES:** Initial written comments must be received no later than 11:59 p.m. EDT on February 3, 2022. Written reply comments must be received no later than 11:59 p.m. EDT on February 18, 2022.

**ADDRESSES:** For reasons of Government efficiency, the Copyright Office is using the Regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office website at <http://copyright.gov/rulemaking/case-act-implementation/representation/>. If electronic submission of comments is not feasible due to lack of access to a computer or the internet, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Megan Efthimiadis, Assistant to the General Counsel, by email at [meft@copyright.gov](mailto:meft@copyright.gov), or by telephone at 202-707-8350.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 27, 2020, the President signed into law the Copyright Alternative in Small-Claims Enforcement (“CASE”) Act of 2020.<sup>1</sup> The CASE Act directs the Copyright Office to establish the Copyright Claims Board (“CCB”), an alternative forum to federal court in which parties may seek resolution of copyright disputes that are capped at a lower economic value.<sup>2</sup> The CCB has authority to hear copyright infringement claims, claims seeking a declaration of non-infringement, and misrepresentation claims under section 512(f) of title 17.<sup>3</sup> Participation in the CCB is voluntary for all parties,<sup>4</sup> and all determinations are non-precedential.<sup>5</sup>

The CASE Act directs the Register of Copyrights to establish the regulations by which the CCB will conduct its proceedings, subject to the provisions of chapter 15 and relevant principles of law under title 17.<sup>6</sup> The Office has issued a notification of inquiry (“NOI”),<sup>7</sup> three notices of proposed rulemaking (“NPRMs”),<sup>8</sup> and one final rule<sup>9</sup> related to CCB procedures. In this notice of proposed rulemaking, the Office proposes procedures governing qualified law students who represent parties in CCB proceedings and procedures governing representation of corporations, limited liability companies,

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<sup>1</sup> Public Law 116-260, sec. 212, 134 Stat. 1182, 2176 (2020).

<sup>2</sup> *See, e.g.*, H.R. Rep. No. 116-252, at 18–20 (2019); S. Rep. No. 116-105, at 1–3 (2019). Note, the CASE Act legislative history cited is for H.R. 2426 and S. 1273, the CASE Act of 2019, a bill nearly identical to the CASE Act of 2020. *See* H.R. 2426, 116th Cong. (2019); S. 1273, 116th Cong. (2019).

<sup>3</sup> 17 U.S.C. 1504(c)(1)–(3). The CCB cannot issue injunctive relief, but can require that an infringing party cease or mitigate its infringing activity in the event such party agrees and the agreement is reflected in the proceeding’s record. *Id.* at 1504(e)(2)(A)(i), (e)(2)(B). This provision also applies to parties making knowing material misrepresentations under section 512(f). *Id.* at 1504(e)(2)(A)(ii).

<sup>4</sup> *Id.* at 1504(a); *see* H.R. Rep. No. 116-252, at 17, 21; S. Rep. No. 116-105, at 3, 11.

<sup>5</sup> 17 U.S.C. 1507(a)(3); *see* H.R. Rep. No. 116-252, at 21–22, 33; S. Rep. No. 116-105, at 14.

<sup>6</sup> 17 U.S.C. 1506(a)(1).

<sup>7</sup> 86 FR 16156 (Mar. 26, 2021).

<sup>8</sup> 86 FR 49273 (Sept. 2, 2021), 86 FR 53897 (Sept. 29, 2021), and 86 FR 69890 (Dec. 8, 2021).

<sup>9</sup> 86 FR 46119 (Aug. 18, 2021).

partnerships, sole proprietorships, or other unincorporated associations (collectively, “business entities”).

## II. Proposed Rule

Under the CASE Act, a party before the CCB may be represented by “a law student who is qualified under applicable law governing representation by law students of parties in legal proceedings and who provides such representation on a *pro bono* basis.”<sup>10</sup>

Consistent with Congress’s directive to develop a system that is accessible to “those with little prior formal exposure to copyright laws,”<sup>11</sup> the Office is committed to facilitating law student representation through law school clinics, which play an important role in providing expanded legal access to often underserved members of the public.<sup>12</sup>

In response to the NOI, one group of commenters suggested that the Office adopt regulations establishing standards for law student representation, such as enrollment in good standing at an American Bar Association (“ABA”)-certified law school, participation in a law school clinic focused on copyright, and supervision by an attorney who takes responsibility for the student’s work.<sup>13</sup> The comments also suggested that the Office maintain a public database of participating law school clinics and include a summary of the law student representation program’s activities as part of the Register’s

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<sup>10</sup> 17 U.S.C. 1506(d)(2).

<sup>11</sup> H.R. Rep. No. 116-252, at 17.

<sup>12</sup> Ilana Kowarski, *How to Gauge the Strength of Law School Clinics*, U.S. News & World Report (Apr. 12, 2018), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2018-04-12/how-to-gauge-the-strength-of-law-school-clinics> (“[A] law school clinic will often perform significant public service projects, such as representing indigent legal clients who cannot afford to pay for legal representation.”).

<sup>13</sup> Copyright Alliance, Am. Photographic Artists, Am. Soc’y for Collective Rights Licensing, Am. Soc’y of Media Photographers, The Authors Guild, CreativeFuture, Digital Media Licensing Ass’n, Graphic Artists Guild, Indep. Book Pubs. Ass’n, Music Creators N. Am., Nat’l Music Council of the United States, Nat’l Press Photographers Ass’n, N. Am. Nature Photography Ass’n, Prof. Photographers of Am., Recording Academy, Screen Actors Guild-Am. Fed. of Television and Radio Artists, Soc’y of Composers & Lyricists, Songwriters Guild of Am. & Songwriters of N. Am. Initial NOI Comments at 43–45.

annual report to Congress.<sup>14</sup> The Office has considered these suggestions as set forth below.

To assess the “applicable law” that would govern any law students appearing before the CCB, the Office surveyed regulations pertaining to law student representation in several jurisdictions that handle a large volume of copyright claims or are geographically close to the Office. Common eligibility requirements for students include enrollment at an ABA-accredited law school,<sup>15</sup> completion of a minimum period of legal studies,<sup>16</sup> completion of relevant coursework,<sup>17</sup> the party’s written consent to the student’s representation,<sup>18</sup> and certification by the student’s law school dean.<sup>19</sup> These jurisdictions also require supervision by an attorney, who must be a member of the bar<sup>20</sup> and generally must assume professional responsibility for the student’s activity,<sup>21</sup> which includes assistance with and approval of the student’s work.<sup>22</sup> The Office believes that some of the

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<sup>14</sup> *Id.*

<sup>15</sup> Cal. R. Ct., R. 9.42(c)(1); Ill. Sup. Ct. R. 711(a)(2); Tenn. Sup. Ct. R. 7, sec. 10.03(c)–(d); D.C. Ct. App. R. 48(b)(1); Md. R. 19-220(a)(1), (b)(1); Va. Sup. Ct. R. pt. 6, sec. IV, 15(b)(i)(a).

<sup>16</sup> Cal. R. Ct., R. 9.42(c)(1) (one full year); N.Y. Comp. Codes R. & Regs. tit. 22, sec. 805.5(f) (2017) (two semesters); Ill. Sup. Ct. R. 711(a)(1) (one-half of the total hourly credits required for graduation); Tenn. Sup. Ct. R. 10.03(d)(1) (one-half of the required curriculum for graduation); D.C. Ct. App. R. 48(b)(2) (one-third of legal studies); Md. R. 19-220(c)(1) (one-third of the total credit hours required to complete the law school program); Va. Sup. Ct. R. pt. 6, sec. IV, 15(b)(ii)(a) (four semesters).

<sup>17</sup> Cal. R. Ct., R. 9.42(c)(3) (evidence and civil procedure); Va. Sup. Ct. R. pt. 6, sec. IV, 15(b)(iii) (criminal law, professional ethics, evidence, and procedure).

<sup>18</sup> N.Y. Comp. Codes R. & Regs. tit. 22, sec. 805.5(c) (2017); Ill. Sup. Ct. R. 711(c); D.C. Ct. App. R. 48(a)(1); Va. Sup. Ct. R. pt. 6, sec. IV, 15(a)(iii).

<sup>19</sup> Ill. Sup. Ct. R. 711(e); Tenn. Sup. Ct. R. 7, sec. 10.03(d); D.C. Ct. App. R. 48(b)(3); Md. R. 19-220(c); Va. Sup. Ct. R. pt. 6, sec. IV, 15(b)(iii).

<sup>20</sup> Cal. R. Ct., R. 9.42(a)(2); N.Y. Comp. Codes R. & Regs. tit. 22, sec. 805.5(e) (2017); Ill. Sup. Ct. R. 711(c); Tenn. Sup. Ct. R. 7, sec. 10.03(h)(3)(A); D.C. Ct. App. R. 48(e)(4); Md. R. 19-220(a)(4); Va. Sup. Ct. R. pt. 6, sec. IV, 15(d)(i).

<sup>21</sup> Cal. Rules of State Bar R. 3.6(B)(3); N.Y. Comp. Codes R. & Regs. tit. 22, sec. 805.5(e) (2017); Tenn. Sup. Ct. R. 7, sec. 10.03(h)(3)(C); D.C. Ct. App. R. 48(e)(2); Md. R. 19-220(d); Va. Sup. Ct. R. pt. 6, sec. IV, 15(d)(ii).

<sup>22</sup> Cal. Rules of State Bar R. 3.6(B)(5); N.Y. Comp. Codes R. & Regs. tit. 22, sec. 805.5(e) (2017); Tenn. Sup. Ct. R. 7, sec. 10.03(g)(2), (h)(3)(C); D.C. Ct. App. R. 48(e)(3); Md. R. 19-220(d); Va. Sup. Ct. R. pt. 6, sec. IV, 15(d)(iii).

provisions discussed above provide appropriate guidance and, as discussed in more detail below, has incorporated many of these requirements into the proposed rule. To make law clinic representation widely available to parties before the CCB, some of the requirements in the proposed rule are slightly more lenient than those imposed by some of the surveyed states.<sup>23</sup> However, under the proposed rule, law students still must meet the requirements imposed by the state in which they are certified, if such requirements exceed those established by the proposed rule.

Accordingly, the Office proposes to create a structure for law student representation that encourages both participation by law school clinics and transparency. The proposed rule addresses the threshold eligibility requirements for law students to appear before the CCB; the expectations for practice by law students and their supervising attorneys while participating in CCB proceedings; and the creation of a public directory of clinics that are available to accept clients appearing before the CCB.

*A. Law student representation eligibility requirements*

The proposed rule permits representation by qualified law students affiliated with qualifying law school clinics. It incorporates the requirements for law student

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<sup>23</sup> For example, the proposed rule requires that the name of the supervising attorney appear on all documents signed by the law student representative, while some jurisdictions require that the supervising attorney sign all documents. *See, e.g.*, Cal. Rules of State Bar R. 3.6(B)(5); Ill. Sup. Ct. R. 711(c)(2)(ii), (v); Tenn. Sup. Ct. R. 7, sec. 10.03(g)(2); D.C. Ct. App. R. 48(d)(2). The proposed rule also only requires the supervising attorney to accompany the law student representative to hearings on the merits, barring leave, and does not require the supervising attorney to accompany the law student representative to conferences, though some jurisdictions require the supervising attorney to accompany the law student representative to a broader range of appearances before a tribunal. *See, e.g.*, Cal. R. Ct., R. 9.42(d)(2), (3) (requiring supervising attorney's presence at depositions and hearings); N.Y. Comp. Codes R. & Regs. tit. 22, sec. 805.5(b)(2), (3), (5), (6) (2017) (requiring supervising attorney's presence at appearances pertaining to criminal matters and to family and other contested civil actions); Tenn. Sup. Ct. R. 7, sec. 10.03(h)(2) (requiring supervising attorney's presence at administrative and adjudicatory proceedings); D.C. Ct. App. R. 48(d)(1), (3) (requiring supervising attorney's presence at appearances before tribunals and at oral arguments, except that the eligible student may appear before the tribunal without the supervising attorney's presence if the matter is not contested and with the tribunal's consent); Va. Sup. Ct. R. pt. 6, sec. IV, 15(a)(i) (requiring supervising attorney's presence at appearance before courts or administrative tribunals).

representation provided by the law of the jurisdiction that certifies the student to practice in connection with a law school clinic. The law student also must meet an appropriate standard of competence,<sup>24</sup> by completing the first year of law school study and receiving formal training in either CCB procedures or copyright law. Law student representation before the CCB must be on a *pro bono* basis.

The proposed rule also sets forth additional requirements for the law student representative and supervising attorneys during the course of representation before the CCB. Many of these provisions are based on the findings of the state law survey, including that clients must consent in writing to the law student's representation and that law student representatives must be supervised by an attorney. Under the proposed rule, supervising attorneys are responsible for confirming law student representatives' eligibility under applicable law and CCB regulations. Supervising attorneys are also responsible for overall case management, including ensuring that there is continuity of representation in any active proceedings during law school term transitions.

The proposed rule requires that both the law student representative and the supervising attorney file notices of appearance in the case (and notices of withdrawal, including if the identity of either the law student representative or the supervising attorney changes during the course of a proceeding). Law student representatives may not file documents with the CCB without the supervising attorney's knowledge, and the supervising attorney must maintain an account in the CCB's electronic file management system to track the law student representative's filings. Any document signed by the law student representative must include the name of the supervising attorney, and the supervising attorney must accompany the law student representative to hearings on the

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<sup>24</sup> Model Rules of Prof'l Conduct R. 1.1 (Am. Bar Ass'n 1983) ("Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation [of a client].").

merits, unless the CCB grants leave for the law student representative to appear without the supervising attorney. The proposed rule does not require the supervising attorney to accompany the law student representative to conferences.

Under the proposed rule, both supervising attorneys and law student representatives are bound by the CCB's standards of conduct governing parties and their representatives. The supervising attorney has responsibility for the law student representative's actions, and the CCB may hold the supervising attorney responsible for the law student representative's activity.

The Office invites comments on whether the proposed regulations strike a proper balance between ensuring that law student representatives are properly qualified and supervised and minimizing burdens on supervising attorneys or clinics, which could diminish the availability of clinical representation for parties in CCB proceedings. The Office is particularly interested in any comments concerning whether a law student should have a minimum amount of formal training in copyright law or in appearing before the CCB; whether supervising attorneys should be required to appear at hearings on the merits; whether the supervising attorney's appearance should also be required at conferences; and whether documents submitted to the CCB must be signed by both the supervising attorney and the law student representative.

#### *B. Law school clinic directory*

The proposed rule provides for the creation of a public directory of law school clinics actively accepting clients for CCB representation. The Office anticipates that there will be a large number of *pro se* (i.e., self-represented) participants in CCB proceedings who are appearing before an adjudicatory body for the first time. While the goal of the CCB is to provide streamlined, easy-to-understand proceedings, such that parties may appear

without an attorney,<sup>25</sup> the Office wants to ensure that participants have as much access to available resources and legal support as possible. To that end, the proposed rule provides the opportunity for law school clinics to self-identify when they are available to represent clients before the CCB. The directory will include contact information for, and the geographic availability of, the clinic; the nature of the clinic's experience with copyright and litigation matters; and a description of the clinic's interest in handling CCB matters. Requiring this information for directory inclusion is intended to provide participants the means of making an informed decision regarding possible law student representation. The Office will make this information publicly available on the condition that the clinic certifies that its students are eligible to practice before the CCB and provides the required information to assist a participant in evaluating whether representation is available and appropriate. Clinics will have a duty to keep their information up to date, and a listing may be removed at the CCB's discretion.

The CASE Act's legislative history suggests that the Office look to the U.S. Patent and Trademark Office's Law School Clinic Certification Program ("USPTO Program") when considering how to encourage law student representation before the CCB.<sup>26</sup> The USPTO Program consists of a complex multi-year process that requires an application by an interested law school clinic, review and acceptance into the program, USPTO monitoring over a training year, and reporting and renewal requirements.<sup>27</sup> The USPTO Program has grown since it was established in 2008, and now over sixty clinics in

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<sup>25</sup> 17 U.S.C. 1506(d) (noting that parties may be represented, but representation is not required); *see* H.R. Rep. No. 116-252, at 17 ("Parties may appear *pro se.*"); S. Rep. No. 116-105 at 4 (noting that "parties may wish to proceed *pro se.*").

<sup>26</sup> S. Rep. No. 116-105 at 4.

<sup>27</sup> *See generally* U.S. Patent and Trademark Office, *Law School Application Packet 2020–2022 Expansion*, [https://www.uspto.gov/sites/default/files/documents/2020-2022-Law\\_School\\_Application\\_Packet-May-2021.pdf](https://www.uspto.gov/sites/default/files/documents/2020-2022-Law_School_Application_Packet-May-2021.pdf) ("USPTO Application") (last visited Dec. 10, 2021).



approximately thirty states are certified to have law students appear before the USPTO.<sup>28</sup> The program is run by five designated legal staff members within the USPTO's Office of Enrollment and Discipline.<sup>29</sup> The majority of the clinics in the USPTO Program represent applicants seeking patent or trademark registrations, and not parties involved in proceedings before the Patent Trial and Appeal Board or Trademark Trial and Appeal Board. Given the fact that practice before the CCB does not require the same type of technical expertise, the Office has adopted those aspects of the USPTO Program that are appropriate for the CCB. In light of the CCB's overall obligations in commencing operations, the Office has proposed a program which is feasible in light of its currently available resources. In the interest of making *pro bono* resources widely known and easily accessible, the Office proposes gathering information similar to information acquired through the USPTO Program<sup>30</sup> and making it publicly available for participants to review and assess. The Office believes that the proposed requirements would allow new clinics located in areas where there are fewer legal resources to participate in the CCB's program, and would allow clinics to be available to represent clients soon after the start of CCB operations. The rule proposed by the Office requires law school clinic directors to certify that the clinic meets all legal obligations under applicable state law prior to inclusion in the public directory. The Office believes that the training in copyright law or practice before the CCB that is required in the regulations will be most valuable to the participating law students. After the CCB has become further established,

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<sup>28</sup> U.S. Patent and Trademark Office, *USPTO Law School Clinic Certification Program*, [https://www.uspto.gov/sites/default/files/documents/USPTO\\_Law\\_School\\_Clinic\\_Certification\\_Program\\_Participating\\_School\\_Map-Oct2020.pdf](https://www.uspto.gov/sites/default/files/documents/USPTO_Law_School_Clinic_Certification_Program_Participating_School_Map-Oct2020.pdf) (last visited Dec. 10, 2021).

<sup>29</sup> U.S. Patent and Trademark Office, *Law School Clinic Certification Program*, <https://www.uspto.gov/learning-and-resources/ip-policy/public-information-about-practitioners/law-school-clinic-1> (identifying five staff attorneys assigned to the Law School Clinic Program) (last visited Dec. 10, 2021).

<sup>30</sup> See, e.g., USPTO Application at 22–25 (requesting information about experience handling trademark and patent matters and requiring law school clinics and supervising attorneys to undertake various responsibilities regarding the law students they supervise).

the Office will reconsider whether more robust requirements should be imposed for law clinic certification.

The Office seeks comments on whether the directory as proposed is sufficient to allow participants to make an informed decision regarding whether and where to seek clinic representation. The Office also seeks comments regarding appropriate outreach strategies for encouraging law school clinic participation.

### *C. Representation of business entities*

Finally, the proposed rule addresses the issue of who will be authorized to represent business entities, which include corporations, limited liability companies, partnerships, and sole proprietorships, before the CCB, and what kind of representation is required. Longstanding practice in federal court requires that a business entities appear with representation of counsel.<sup>31</sup> Other jurisdictions, however, provide greater flexibility, particularly in the small claims context. In the Small Claims and Conciliation Branch of the Civil Division of the Superior Court of the District of Columbia, for instance, a corporation may appear as a plaintiff only when represented by counsel, but as a defendant, it may be represented by an authorized officer, director, or employee.<sup>32</sup> In Virginia small claims court, a corporation or partnership may be represented by an officer or an employee of that entity. In fact, it may be represented by an attorney only when the attorney is entering an appearance to remove a case to general district court.<sup>33</sup> In contrast, when appearing in a Virginia general district court, a corporation must be represented by an attorney, unless the amount in controversy is \$2500 or less, the party is a private

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<sup>31</sup> *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201–02 (1993) (“It has been the law for the better part of two centuries, for example, that a corporation may appear in the federal courts only through licensed counsel.”).

<sup>32</sup> D.C. Sup. Ct. Small Cl. R. 9(b); D.C. Ct. App. R. 49(c)(11).

<sup>33</sup> Va. Code Ann. 16.1-122.4 (2021). An attorney may represent a corporate or partnership plaintiff or defendant, but only if they are appearing *pro se* and not in a representative capacity. *Id.* at 16.1-122.4(A)(1).

corporation whose stock is held by no more than five persons, and all stockholders consent to an officer providing representation.<sup>34</sup> In Maryland, an officer, designated employee, partner, or member of a limited liability company may appear on behalf of the entity in the District Court of Maryland, so long as the action is a small claims action and is not based on an assignment to the entity of the claim of another.<sup>35</sup>

Given the small claims nature of the CCB and the interest in facilitating participation before it, the proposed rule resembles the practices in some state small claims courts rather than the federal system. A business entity may be represented by an attorney, fiduciary, or authorized employee in a CCB proceeding. Representatives must certify that they are authorized to represent and bind the entity; if the representative is an employee, the employee must also submit written proof of that authorization. The Office welcomes comments on this proposed framework.

## **List of Subjects**

### **37 CFR Part 201**

Copyright, General provisions.

### **37 CFR Part 232 and 234**

Claims, Copyright.

## **Proposed Regulations**

For the reasons stated in the preamble, the U.S. Copyright Office proposes to amend Chapter II, Subchapters A and B, of title 37 Code of Federal Regulations, as proposed to be amended at 86 FR 69890 (December 8, 2021), as follows:

## **SUBCHAPTER A—COPYRIGHT OFFICE AND PROCEDURES**

### **PART 201—GENERAL PROVISIONS**

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<sup>34</sup> *Id.* at 16.1-81.1; *see id.* at 16.1-88.3 (generally prohibiting non-attorneys from litigating cases in Virginia courts).

<sup>35</sup> Md. Code Ann., Bus. Occ. & Prof. 10-206(b)(4) (2021).

1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

Section 201.10 also issued under 17 U.S.C. 304.

2. In § 201.2, revise paragraph (a)(2) to read as follows:

**§ 201.2 Information given by the Copyright Office.**

(a) \* \* \*

(2) The Copyright Office does not furnish the names of copyright attorneys, publishers, agents, or other similar information to the public, except that it may provide a directory of *pro bono* representation available to participants in proceedings before the Copyright Claims Board.

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**SUBCHAPTER B—COPYRIGHT CLAIMS BOARD AND PROCEDURES**

**PART 232—CONDUCT OF PARTIES**

3. The authority citation for part 232 continues to read as follows:

**Authority:** 17 U.S.C. 702, 1510.

4. Add § 232.6 to read as follows:

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**§ 232.6 Representation of business entities.**

(a) *Definition.* For the purpose of this section, a *business entity* is a corporation, limited liability company, partnership, sole proprietorship, or unincorporated association.

(b) *Appearance of a business entity.* A *business entity* may appear before the Copyright Claims Board (“Board”) through: (1) A member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States;

(2) A law student who meets the requirements set forth in 37 CFR 234.1;

(3) An owner, partner, officer, or member of the *business entity*; or

(4) An authorized employee.

(c) *Certification.* Someone appearing before the Board to represent a *business entity* pursuant to paragraphs (b)(3) or (4) of this section shall certify that they are an authorized agent of the *business entity* and may bind that entity in matters pending before the Board. If the representative qualifies only as an authorized employee under paragraph (b)(4) of this section, then within 30 days of the authorized employee's initial appearance, the representative also must submit written authorization, signed by an owner, partner, officer, or member of the *business entity* under penalty of perjury, stating that the representative may bind that entity on matters pending before the Board.

(d) *Subject to standards of professional conduct.* Representatives of business entities who appear pursuant to paragraphs (b)(3) or (4) of this section are equally subject to the standards of conduct set forth in 37 CFR 232.1 as any other party representative.

5. Part 234 is added to read as follows:

## **PART 234—LAW STUDENT REPRESENTATIVES**

Sec.

234.1 Law student representatives.

234.2 Law school clinic directory.

**Authority:** 17 U.S.C. 702, 1510.

### **§ 234.1 Law student representatives.**

(a) *Eligibility for appearance.* (1) *State law compliance.* Any law student who is affiliated with a law school clinic, is qualified under applicable laws governing representation by law students of parties in legal proceedings, and meets the other requirements of this paragraph may appear before the Copyright Claims Board ("Board"). Applicable law is the law of the jurisdiction that certifies the student to practice law in conjunction with a law school clinic.

(2) *Pro bono representation.* Any law student who appears before the Board must provide representation on a *pro bono* basis.

(3) *Competency.* Law student representatives must meet a standard of competency.

For the purpose of appearances before the Board, competency includes successful completion of:

(i) The first year of studies at an American Bar Association-accredited law school;  
and

(ii) A copyright law course, formal copyright law training, or formal training in Board procedures.

(b) *Client consent.* The law student representative shall have the written consent of the client for the law student to appear on that client's behalf.

(c) *Attorney supervision.* A law student who represents a party in a proceeding before the Board shall be supervised by an attorney who is qualified under applicable law governing representation by law students, as specified in paragraph (a) of this section. In supervising the law student, the attorney shall adhere to the requirements of 37 CFR 232.5.

(d) *Confirmation of eligibility.* In accordance with the standards of professional conduct set forth in paragraph (j) of this section, the attorney supervising the work of the law student representative is responsible for confirming the law student's eligibility to appear before the Board as set forth in paragraph (a) of this section.

(e) *Identification of supervising attorney in documents.* The name of the supervising attorney shall appear on all documents signed by the law student representative.

(f) *Notice of appearance.* In any proceeding in which a law student represents a party, a notice of appearance shall be filed pursuant to 37 CFR 232.5(a) identifying both the law student representative and the supervising attorney.

(g) *Filing documents.* All filings by a law student representative shall be made with the knowledge of the supervising attorney, who shall maintain an association with the law student representative in the electronic filing system. The supervising attorney shall maintain their own account, in addition to the law student's account, in the electronic filing system to track law student filings. A notice of withdrawal shall be filed whenever the identity of a law student representative or a supervising attorney has changed.

(h) *Appearance at hearings.* The supervising attorney shall accompany the law student representative to hearings held in accordance with 37 CFR 222.15, absent leave of the Board for the law student to appear without the presence of the supervising attorney.

(i) *Responsibility for continuity of case management.* The supervising attorney shall be responsible for all aspects of case management, including appearances and withdrawals, as well as continuity of representation during law school term transitions.

(j) *Applicability of rules of professional conduct.* Law student representatives are equally subject to the standards of conduct set forth in 37 CFR 232.5 as any other attorney representatives. The supervising attorney has professional responsibility for the actions of the law student representative. The Board may hold supervisory attorneys responsible for law student representative activity.

#### **§ 234.2 Law school clinic directory.**

(a) *Publicly available directory.* The Board shall make a directory available on its website of law school clinics that have advised the Board that they are available, on a *pro bono* basis, to represent clients in proceedings before the Board.

(b) *Form for inclusion.* To be included in the public directory, the law school clinic director shall submit a form providing the following information for public dissemination:

- (1) The name of the participating law school;
- (2) The name of the participating clinic;

- (3) The name of the director of the clinic;
- (4) A general contact email address and phone number;
- (5) The geographic area from which the clinic may accept clients;
- (6) Whether the clinic has handled copyright matters in the past two years;
- (7) The nature of any copyright matters handled by the clinic in the past two years;
- (8) Whether the clinic has experience in handling litigation matters;
- (9) If the clinic does not have litigation experience, whether the clinic has a partnership with a litigation clinic;
- (10) A brief statement describing the clinic's interest in handling matters before the Board; and
- (11) A certification that student representatives participating in the clinic will meet all requirements of 37 CFR 234.1(a).

(c) *Standards for inclusion.* Subject to paragraph (d) of this section, the Board will accept for inclusion in the public directory any law school clinic that certifies that its law student representatives will meet all requirements of 37 CFR 234.1(a) and provides sufficient information pursuant to paragraph (b) of this section for participants in Board proceedings to evaluate whether representation is available and appropriate.

(d) *Removal from directory.* The Board may, in its discretion, remove a clinic from the directory if it determines that the clinic is not suitable for representing clients before the Board, including, without limitation, if it determines that the clinic has failed to properly update its information in the public directory.

(e) *Duty to update directory.* Participating clinics have a duty to maintain current information in the directory and shall confirm the currency of the information on an annual basis.

Dated: December 22, 2021.

**Kimberley Isbell,**



*Acting General Counsel and  
Associate Register of Copyrights.*

**[BILLING CODE 1410-30-P]**

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